IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 939 of 2003 (M/B)

Ram Kishore S/o Sri Ram Gopal,
R/o Village Rampura, P.O. Rudrapur,
Tehsil Kichha,
District Udham Singh Nagar. …… Petitioner

Versus

1. State of Uttaranchal,
   through Secretary, Samaj Kalyan Vibhag,
   Dehradun,
2. Collector,
   Udham Singh Nagar.
3. Tehsildar, Kichha,
   District Udham Singh Nagar.
4. Ved Prakash S/o Sri Baldev,
   R/o Ward No. 7 Rampura, Rudrapur,
   District Udham Singh Nagar. ……. Respondents

Mr. L.P. Naithani, Senior Counsel with Mr. T.A. Khan, Advocate for the petitioner.
Mr. Subhash Upadhyaya, Standing Counsel for respondents Nos. 1 to 3.
Mr. S.K. Mandal, Advocate for respondent No. 4.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Prafulla C. Pant, J.

RAJEEV GUPTA, C. J. (Oral)

Mr. L.P. Naithani, Senior Counsel with Mr. T.A. Khan, Advocate for the petitioner.

Mr. Subhash Upadhyaya, Standing Counsel for respondents Nos. 1 to 3.

Mr. S.K. Mandal, Advocate for respondent No. 4.

They are heard.

2. Petitioner Ram Kishore has filed this writ petition for the following releifs:

> "i) To issue writ or order or direction in the nature certiorari for quashing the order passed by respondent no. 3, Annexure 21 and that the scheduled caste certificate granted earlier may be restored.

ii) To issue any other and further writ, order or direction which the Hon'ble court may deem fit and proper in the circumstances of the case.

iii) To award cost of the petition to the petitioner."

3. Though it is not in dispute that petitioner Ram Kishore is *Gadariya* by caste, it is seriously disputed that *Gadariya* caste is sub-caste of *Dhangar Caste.* Such a seriously disputed question of fact cannot be decided in a writ petition under Article 226 of the Constitution of India as the same would require leading of evidence by the parties.

4. During the course of hearing, it was brought to our notice that an Election Petition challenging the election of the petitioner is pending. The petitioner shall be at liberty to establish the above fact in those proceedings by adducing evidence in support of his claim.

5. The proceedings in Election Petition No. 65 of 2003 pending in the court of District Judge, Udham Singh Nagar shall be disposed of expeditiously.

6. Since we have not examined the petitioner's case on merits, the District Judge shall be free to assess the evidence led by the parties on the above question on its own merits.

7. With the above observation, the writ petition stands disposed of.

8. Consequently, the interim order dated 20.12.2003 stands vacated automatically.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C. J.)**

12.06.2006 12.06.2006

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